

ISAAC BLACKFORD: FIRST MAN OF THE COURT

SUZANN WEBER LUPTON*

When the old judge died, the congressman, whose career owed much to the judge's influence, gave this tribute.

It is hardly possible for persons who live in an old community to

appreciate the extent to which, in a new country, the character of a public man may be impressed upon the public mind. There is not a community in Indiana, not a single one, in which the name of Judge Blackford is not a household word. He has been identified with our State since the first; he may be said to be a part of our institutions. Judicial ability, judicial purity approaching almost to the divine, private worth singularly blending the simplicity of childhood with the sober gravity of age, these were represented not simply in the mind of the profession, but in the universal popular mind of Indiana, in the person of Isaac Blackford.¹

Isaac Newton Blackford spent his adult life in visible public service. He sat

on the Indiana Supreme Court from September 10, 1817, to January 3, 1853,² a total of over thirty-five years, longer than any other justice to date. A meticulous jurist and devoted scholar of the English common law, Blackford carefully crafted a body of precedent for our young state. His work in drafting and reporting the decisions of the Indiana Supreme Court garnered him and the Indiana judiciary an international reputation.³ Certainly, a man so described would maintain a place of honor in our collective memory; yet, Isaac Blackford is little known to most current members of Indiana's bench and bar. Those who do recognize the name connect it with Blackford's Reports but know little, if anything, about the man who was once a household name. This Article will reintroduce Blackford, whose work helped lead the state "from a wilderness into a cultivated and civilized community."⁴

The son of a wealthy merchant, Isaac Blackford was born in Somerset County, New Jersey in 1786.⁵ After graduating from Princeton University, he took positions "reading the law," first with Col. George McDonald and then with

*. Deputy Attorney General, Office of the Attorney General of Indiana. B.A., 1988, DePauw University, Greencastle, Indiana; J.D., 1991, Indiana University School of Law—Indianapolis. The author expresses her gratitude to Andrew Lupton for his assistance with this project.

1. 1 LEANDER J. MONKS, COURTS AND LAWYERS OF INDIANA 192 (1916).

2. 1 *id.* at 175.

3. William W. Thornton, *Isaac Blackford, the Indiana Blackstone*, 8 IND. HIST. BULL. 316 (1931) [hereinafter Thornton, *Indiana Blackstone*].

4. *Id.*

5. A. Van Doren Honeyman, *A Famous Western Jurist, Native of Somerset*, 5 SOMERSET COUNTY HIST. Q. 1 (1916); William W. Thornton, *Life of Isaac Blackford* 2 (unpublished manuscript, on file with the Indiana State Library, Manuscript Collection S1312) [hereinafter Thornton, *Blackford*].

Judge Gabriel Ford.⁶ For reasons undocumented, Blackford heard the call of the west and decided to migrate.⁷

Varied references recount a popular, but most likely apocryphal, tale of Blackford's journey west. According to the story, Blackford, unable to pay for a stagecoach, walked to Olean Pointe, Pennsylvania, on the Allegheny River and then navigated west on a crude flat-board raft.⁸ In light of his social position and character, it is more likely that Blackford traveled by horseback.⁹ Regardless of his manner of travel, Blackford arrived in Indiana in approximately 1812.

At the time of his arrival, the population in the Indiana territories numbered only twenty-five thousand.¹⁰ Corydon was described as a "tiny huddle of log cabins in the midst of the sea of primeval forest."¹¹ The total territorial tax levy did not exceed \$2000.¹²

Blackford first took a job as a clerk in the bank at Vevay. This position ended when fraud and mismanagement, which it is suggested that Blackford uncovered,¹³ led the bank to failure. This experience left Blackford with a skeptical view of banks that would shape his financial habits throughout his life.¹⁴ For a time, Blackford worked in Salem, Indiana, as Washington County's first

6. Honeyman, *supra* note 5, at 5.

7. Aside from court related papers, only one document drafted by Blackford remains in existence. Consequently, the author relied upon biographical sketches and second hand reports such as those appearing in contemporary newspapers. Unfortunately, these sources rely primarily upon one another, providing little or no source attribution. Author and reader are, to a great extent, left to surmise and suppose about much of Blackford's character and motivations. *See infra* note 28 and accompanying text.

8. Thornton, *Blackford*, *supra* note 5, at 4; *Judge Blackford, A Sketch of his Life and Character*, INDIANAPOLIS NEWS, Feb. 21, 1881 in 1 COTTMAN, INDIANA SCRAPBOOK COLLECTION 9 [hereinafter COTTMAN].

9. Honeyman, *supra* note 5, at 5. In contrast to current practice, the press at that time lionized popular figures in public life. Descriptions of their person, attributes and work bordered on the excessive. Particularly apparent in these 19th century descriptions was a tendency to emphasize, or possibly create in their subjects characteristics admired by the average man. In Indiana, for example, descriptions emphasized rugged frontierism.

10. Thornton, *Blackford*, *supra* note 5, at 4.

11. Honeyman, *supra* note 5, at 6. The author of this article quotes at length from an "Indianapolis clipping" in describing Corydon:

In the lanes of Corydon the adventurous sons of aristocratic Virginia rubbed cloth elbows with the buckskin clad trapper, brown and silent as the Indiana himself Land was plentiful. Money was little needed. Business was a system of trade and barter. English shillings and Spanish dollars passed current; the merchant who made change chopped the silver coin into pieces and weighed each segment; justice was swift and salutary; lashes on the bare back were frequent; Judges held court on fallen logs in the midst of the unbroken forest. . . .

12. Thornton, *Blackford*, *supra* note 5, at 4.

13. *Id.*

14. *Id.*; Thornton, *Indiana Blackstone*, *supra* note 3, at 319.

clerk and recorder.¹⁵ Blackford is alleged to have remarked that his chief duty was to “record marks on cattle which strayed at large in the absence of stock enclosures.”¹⁶

In 1813, Blackford was elected Clerk of the Territorial Legislature which convened in Corydon.¹⁷ He resigned this position on September 14, 1815, after being appointed President Judge of the First Judicial Circuit.¹⁸ The life of a circuit judge was lonely, difficult and sometimes dangerous. Circuit judges, often accompanied by the attorneys who also rode the circuit between developing towns and burgs, spent the year crossing the state’s terrain and holding court for a few days, as needed, before moving on to the next town.¹⁹

Blackford was not long for the rigors of circuit riding; he resigned his position in 1816 and returned to Vincennes to resume legal practice and to campaign for a seat in the state’s first constitutional legislature.²⁰ In 1817, he was elected Representative from Knox County and upon arriving in Corydon was soundly elected Speaker.²¹ It appears that his brief stint as Speaker was uneventful.

As Blackford convened the state’s first House of Representatives, Indiana’s first supreme court justices entered office and began creating Indiana’s judicial legacy.²² Justices James Scott, Jesse L. Holman and John Johnson opened the

15. Thornton, *Indiana Blackstone*, *supra* note 3, at 319.

16. Honeyman, *supra* note 5, at 6-7.

17. *Id.* at 7.

18. Thornton, *Indiana Blackstone*, *supra* note 3, at 320.

19. See 1 MONKS, *supra* note 1, at 8-10, for a thorough description of the life and challenges of the circuit riders.

20. Thornton, *Indiana Blackstone*, *supra* note 3, at 320.

21. Honeyman, *supra* note 5, at 7; Thornton, *Blackford*, *supra* note 5, at 5.

22. In late 1816, the legislature enacted a statute “organizing the supreme court and regulating the practice therein.” Act of Dec. 23, 1816, ch. 1, 1816 Ind. Acts 3 (superseded). This statute, among other things, defined the supreme court jurisdiction. *Id.* § 7 at 5. However, the legislature was not free to restrict the court’s jurisdiction in a way “repugnant to this constitution” IND. CONST. of 1816, art. V, § 2. Generally, the supreme court’s jurisdiction extended to all judgments and decrees given by an inferior court of record in the state. Act of Dec. 23, 1816, ch. 1, §§ 7, 13, 1816 Ind. Acts 3, 5-6 (superseded).

Some of the legislature’s regulation of supreme court practice would sound strange to a modern reader. There was no right to appeal a criminal case to the supreme court. *Id.* Criminal cases only made their way to the supreme court on a common law writ of error. See, e.g., *Wynn v. State*, 1 Blackf. 28 (Ind. 1818). A provision of the 1816 Constitution gave the legislature the power to give the supreme court original jurisdiction in certain cases. IND. CONST. of 1816, art. V, § 2. Where the court had original jurisdiction or where it could review the facts on appeal, it had the power to summon witness, impanel juries and determine the facts in the same manner as a trial court. Act of Dec. 23, 1816, ch. 1, § 8, 1816 Ind. Acts 3, 5 (superseded).

Other provisions would sound familiar to a modern reader. An ordinary writ of error (i.e., a common law appeal) did not act as a supersedeas (i.e., did not stay the execution of the judgment) in criminal cases. *Id.* § 7 at 5. However, the court, in its discretion, could issue a supersedeas. *Id.*

court's inaugural session on May 5, 1817.²³ After issuing two opinions, both holding that the litigants had failed to perfect their appeals, the court retired.²⁴ A few weeks later, Justice Johnson passed away. Governor Jennings again had the opportunity to appoint a judge. He would call upon Blackford.

The exact nature of the relationship between Jennings and Blackford is uncertain. The two men were linked by their heritage. They came from neighboring towns in New Jersey, arriving in Indiana only two years apart.²⁵ It can be fairly speculated that even if they were not acquainted before they departed New Jersey, this common heritage advanced their association once in Indiana. The two also shared a common political philosophy that led them to side together in a controversial fight.²⁶

Blackford began his political life as a member of the Whig Party.²⁷ But unlike prominent members of the party, he strongly opposed slavery and allied himself with Jennings, who led the Free State Party.²⁸ So strong was his opposition to the institution of slavery that when Governor Harrison was a candidate for President on the Whig ticket in 1836, Blackford, who blamed Harrison for the effort to make Indiana a slave territory, openly refused to support

§ 15 at 7. Also, an appeal could be sought only from final judgment that equaled or exceeded fifty dollars or appertained to a freehold franchise. *Id.* § 14 at 6-7. The fifty-dollar requirement survives today. IND. CODE § 33-3-2-4 (1993). Once an appeal was made to the supreme court, the transcript had to follow within thirty days. Act of Dec. 23, 1816, ch. 1, § 7, 1816 Ind. Acts 3, 7 (superseded). For a discussion of the supreme court's jurisdiction, see 1 MONKS, *supra* note 1, at 178-79.

Interestingly, prior to assuming office, judges were required to take two oaths: one to uphold the constitution and one to prohibit them from dueling. Act of Jan. 3, 1817, ch. 39, §§ 1, 3, 1817 Ind. Acts 180, 180-81 (superseded); Thornton, *Indiana Blackstone*, *supra* note 3, at 321.

23. Justices Scott and Johnson served as influential figures on the Judiciary Committee of the Indiana Constitutional Convention. 1 MONKS, *supra* note 1, at 176. Holman was the third member on the inaugural bench. *Id.*

These appointments appear to have been the result of a masterful political compromise. James Noble, William Hendricks and Jonathan Jennings were generally regarded as the most powerful men in the state in 1816. It is speculated that the three worked out a compromise at the constitutional convention: Jennings became governor; Hendricks, a congressman; Noble, a United States Senator. When it came to the appointment to the court, each chose one man. Jennings selected his friend and neighbor James Scott, Noble choose his friend and neighbor Jesse L. Holman, and Hendricks chose John Johnson from Vincennes. 1 MONKS, *supra* note 1, at 183-84.

24. 1 *id.* at 181.

25. 1 *id.* at 187.

26. 1 *id.*

27. Thornton, *Indiana Blackstone*, *supra* note 3, at 322.

28. WILLIAM W. WOOLLEN, BIOGRAPHICAL AND HISTORICAL SKETCHES OF EARLY INDIANA 350 (Indianapolis, Hammond & Co. 1883). In fact, the only known remaining document produced by Blackford, other than those dealing with court business, is the manuscript of an anti-slavery speech given by Blackford in 1829 to the Indiana Colonization Society, the organization which was to become the Indiana Historical Society. (Document on file with the Indiana State Library, manuscript collection in INDIANA PAMPHLETS: ADDRESSES (Indiana State Library ed., 1900)).

Harrison and changed his alliance and became a member of the Democratic Party.²⁹ He remained a Democrat for the rest of his life.³⁰

Blackford may have offered an additional appeal to Jennings. Some evidence suggests that Blackford was generally viewed as either outside or above political partisanship.³¹ Blackford was reappointed to his seat by governors of different parties five times, despite the fact that on at least two occasions, his colleagues were removed for what were generally regarded as purely political reasons.³² Blackford was generally well regarded by his peers. Jennings was thus able to forward a well-liked candidate respected for his abilities, who apparently was not a political liability.

The tale commonly repeated about Blackford's appointment provides another example of the fanciful tales surrounding popular figures.³³ Blackford attended Justice Johnson's funeral. Though it began as a courtesy, Blackford's visit turned out to be one of the most significant of his life. According to the popularly repeated versions of events, Blackford walked with the other mourners to Johnson's grave. Governor Jennings took Blackford by the arm and, as the two walked together, Jennings revealed his intent to nominate Blackford as Johnson's successor.³⁴ The surprise rendered the young representative dumbstruck. After recovering, he begged the Governor to reconsider and appoint another with more experience and intellect.³⁵ Ignoring these pleas, the Governor forwarded Blackford's name to the senate for approval.

This charming tale may contain at least some grain of truth. At the time of his appointment, Blackford, only thirty-one years old, had little legal experience compared to many of his peers. By all accounts a retiring man, he may have been intimidated by the thought of presiding over the group of colorful characters who populated the state's young bar.

It is unlikely, however, that this fear would have overridden Blackford's known ambition. Blackford, after all, was an inveterate officeholder.³⁶ In addition to the various political positions sought by Blackford prior to obtaining his supreme court seat, he sought or was nominated for several political offices including governor, state senator and, on two occasions, U.S. Congress.³⁷ Despite some close votes, he never succeeded in obtaining another office. Though respected, Blackford lacked political skill. Additionally, Blackford's

29. *Id.* at 350-51.

30. Honeyman, *supra* note 5, at 13.

31. 1 COTTMAN, *supra* note 8, at 10.

32. *Id.* at 11.

33. Honeyman, *supra* note 5, at 7; Thornton, *Blackford*, *supra* note 5, at 5; 1 COTTMAN, *supra* note 8, at 13.

34. Honeyman, *supra* note 5, at 7.

35. Thornton, *Blackford*, *supra* note 5, at 5.

36. 1 MONKS, *supra* note 1, at 187.

37. Honeyman, *supra* note 5, at 8; 1 MONKS, *supra* note 1, at 190; Thornton, *Blackford*, *supra* note 5, at 11. Some reports suggest that Blackford was nominated for many of these offices without his knowledge or consent. Honeyman, *supra* note 5, at 8.

personality, particularly in his later years, was contrary to that needed for political success.

Though not without friends, Blackford was not sociable.³⁸ He was not active in any organization or church³⁹ and generally kept to himself and his work. Blackford was generally regarded as a man of the utmost integrity, devoted to his work beyond the norm.⁴⁰ Some colleagues and reports refer to him as being filled with “nervous energy.”⁴¹ He purportedly worked for days on end with virtually no sleep beyond that absolutely necessary. By all accounts, he was a recluse, often shutting himself away for what one commentator described as weeks on end in his tiny apartment in the governor’s mansion on what is now Monument Circle.⁴² He maintained a library of over 2000 volumes, very extensive for its day, and virtually all of these works were legal in nature.⁴³

Blackford was so devoted to his work that he regarded even dealing with his money as something of an annoyance.⁴⁴ Accounts of Blackford’s lifestyle indicate that he spent little of his annual salary, which ranged from \$700 to \$1500 over the course of his tenure.⁴⁵ Due to his prior experience with banks, he allegedly distrusted the institutions and refused to invest his money there. Periodically, he would fail to collect his salary for a year or more, instead allowing it to remain in the treasury to accumulate interest.⁴⁶ When he did claim his money, it typically went to purchase property.⁴⁷

For Blackford, his work was, in a somewhat literal sense, his life. Blackford took his seat as justice during the fall term of 1817 when he was thirty-one years old. During his tenure, he authored over 900 opinions, each drafted with the utmost care.⁴⁸ He pored over the record of the cases slowly and methodically.

38. He had, for a brief period, been married to Caroline McDonald, daughter of his first employer, Col. George McDonald. This union ended after only fifteen months when his bride died in childbirth. The marriage had, by popular accounts, been unhappy. Honeyman, *supra* note 5, at 10. His wife purportedly enjoyed the social life, including the attention of male friends. The child produced by this union died at a tender age as well. *Id.*

39. WOOLLEN, *supra* note 28, at 352.

40. 1 COTTMAN, *supra* note 8, at 11.

41. Honeyman, *supra* note 5, at 13.

42. *Id.* This room was located in the same building as the court’s chambers. Thornton, *Indiana Blackstone*, *supra* note 3, at 322.

43. 1 MONKS, *supra* note 1, at 191.

44. 1 COTTMAN, *supra* note 8, at 12.

45. Honeyman, *supra* note 5, at 11.

46. *Id.* at 10; 1 MONKS, *supra* note 1, at 192.

47. Blackford made numerous, shrewd real estate purchases in Indianapolis and Evansville. These lands were developed and used as rental properties. 1 COTTMAN, *supra* note 8, at 12. The income from these properties as well, as from the sale of the Blackford reports, generated a handsome sum. At Blackford’s death, his estate was valued at approximately \$250,000. Honeyman, *supra* note 5, at 11; Thornton, *Indiana Blackstone*, *supra* note 3, at 327.

48. See 1 MONKS, *supra* note 1, at 210-244 (compiling a listing of the Indiana Supreme Court docket and the authors of the opinions, 1816-46).

Numerous additional hours were spent researching the law and drafting and redrafting his opinion.

Blackford was a great aficionado of Britain's common law. According to one of Blackford's early biographers,

[a]n English precedent with him was of more value than an original line of reasoning. His saving trait was the accurate application of the principles of the law to the facts as his untiring research revealed them to him. Without the power to make this application, his great desire to be accurate, and his patience in research, he would have failed as a judge.⁴⁹

Blackford's real acclaim, and his greatest contribution to the development of this state's jurisprudence and reputation, came through his work as the first reporter of Indiana decisions. Blackford voluntarily took on the task of accumulating and publishing those opinions of the court which he believed significant. He started the work in 1820. The first of the eight volumes published by Blackford appeared in 1830 and the last in 1850. In a preface to the first volume Blackford explained:

This volume of Reports, containing the decisions of the Supreme Court of the State during the first ten years of the government, is respectfully submitted to the Public.

The adjudications of the Court, constituting a part of the law of the country, should be generally known; and it is hoped that their publications will be satisfactory and useful. It is not anticipated that the work will be found free from imperfections. The Reporter, however, has spared no exertion to render it accurate and acceptable; and he confides it, with cheerfulness, to the liberality of his fellow-citizens.

It was thought advisable to preserve this volume, as much as possible, from any thing [sic] that might be considered superfluous. With the approbation of the other members of the Court, therefore, some of the cases have been abbreviated, and a few others, that have been overruled or were otherwise unimportant, have been omitted.

The Reporter has subjoined a few notes to some of the cases, with a hope that the references maybe [sic] a convenience to the student, in his investigation of subjects connected with the text.⁵⁰

Unlike current reporters—compilations of every opinion deemed publishable by the appropriate court presented in the form in which it was handed down—Blackford's reports were, in every sense, his own. He selected the decisions that would appear.⁵¹ He edited the opinions, appending explanatory notes or even changing the text of the opinion itself.⁵² No record of objection to

49. Thornton, *Blackford*, *supra* note 5, at 11; *see also* 1 MONKS, *supra* note 1, at 190.

50. 1 BLACKFORD'S REPORTS at iii (Indianapolis, Bowen-Merrill Co. 2d. ed., 1891).

51. 1 MONKS, *supra* note 1, at 191.

52. Thornton, *Blackford*, *supra* note 5, at 6.

this practice exists, suggesting in part that Blackford, true to his reputation, took pains to ensure that his edited versions of the opinions maintained the spirit and letter of the author's intentions.

By all accounts, the pains Blackford took to ensure accuracy in his reports were extraordinary. He wrote and edited tirelessly, a drive for perfection bordering on the maniacal. Blackford routinely delayed publication of his volumes to correct minor, even trivial errors. He paid significant sums to his printer to delay printing or to re-run the printing of volumes.⁵³ During the publication of the eighth volume, the printing house was held up for three days to allow him to determine the orthography of the word "jenny," a female ass.⁵⁴ Printing of this addition took over eighteen months and cost Blackford over \$1100 in delay fees to the printer.⁵⁵ On one occasion, a signature was allegedly printed four times before he gave approval to it.⁵⁶ It is said that he never made use of editorial marks, preferring instead to rewrite the entire page.⁵⁷

Blackford kept drafts of works in progress in the court's library. Alongside these drafts, he left blank paper for anyone to note errors located. A reward was offered for such finds.⁵⁸ The greatest reward for editing prowess likely went to Albert G. Porter. Porter noted that one of the drafts contained the word "optionary," but no such word existed.⁵⁹ Several years later, Porter found himself surprised upon being appointed reporter of the supreme court.⁶⁰ After receiving the appointment, Porter paid a call upon the governor to thank him. The governor informed Porter that his position was secured upon the urging of Justice Blackford.⁶¹ As a U.S. Congressman, Porter would eventually pay tribute to the man who secured Porter's first job in a speech given at a meeting of the Washington, D.C. bar.⁶²

Blackford's careful work in completing the reporters led to his wide reputation. Within the state, "people little learned in the machinery of government regarded him as the maker of the law, always quoting him in place of the statutes."⁶³ Chancellor Kent observed that the reporters were "replete with extensive and accurate law-learning, the notes of the learned reporter annexed to the cases being especially valuable."⁶⁴ Washington Irving, then serving as secretary to the delegation to the Court of St. James, purportedly wrote that he was often asked of the "author whose name is already quite familiar at

53. Honeyman, *supra* note 5, at 12.

54. 1 COTTMAN, *supra* note 8, at 10.

55. Thornton, *Blackford*, *supra* note 5, at 7.

56. *Id.* at 6.

57. 1 COTTMAN, *supra* note 8, at 10.

58. Honeyman, *supra* note 5, at 12; Thornton, *Blackford*, *supra* note 5, at 7.

59. Thornton, *Blackford*, *supra* note 5, at 7.

60. *Id.*

61. *Id.*

62. 1 MONKS, *supra* note 1, at 192.

63. 1 COTTMAN, *supra* note 8, at 9.

64. Thornton, *Indiana Blackstone*, *supra* note 3, at 325.

Westminster.”⁶⁵ Another contemporary said that the reports “have the reputation of being among [sic] the best American reports” and that “[i]n Indiana he was the pioneer in establishing the common law practice, and throughout the West he was the most eminent authority on common law practice”⁶⁶

However, publication of the volumes was not without controversy. Blackford’s slavish devotion to the publication’s accuracy slowed the business of the court. Critics claimed that he spent so much time on the reports that the court was over two years behind in hearing cases.⁶⁷ His work on the reports affected not only the number of opinions that he was able to issue but also the total number of opinions issued by the court as a whole. For a time, the court maintained the custom of each justice preparing an equal number of decisions.⁶⁸ Therefore, when one justice finished the case assigned to him, he waited until his associates had reported before taking up another. Under this arrangement, Blackford was always last to report. It is said that Justice Dewey’s great love of literature originated from the time that he spent waiting for Blackford to catch up.⁶⁹

Even the members of the bar were alleged to have used Blackford’s fastidiousness to their advantage. According to one story, attorney Samuel Judah hoped to delay the issuance of a decision in a case involving his client until the next term.⁷⁰ He approached Blackford and questioned the spelling of a word that he knew would be in the opinion. Blackford spent two days seeking the correct spelling of the word, which was enough time to allow the court to adjourn. The opinion was carried over to the next term.⁷¹ Blackford’s plodding pace eventually damaged his reputation as people began to complain that he could no longer work at a speed necessary to allow the court to address its business in a timely fashion.⁷²

Blackford’s monetary gain from the publication of his reports caused a greater fury. Blackford’s critics felt that he was inappropriately reaping significant financial reward while impeding the business of the court.⁷³ Undoubtedly, knowledge of Blackford’s extensive real estate holdings and his peculiar method of money management added fuel to this fire.⁷⁴ This criticism, in part, led the delegates to the constitutional convention to create the position of

65. *Id.*

66. Honeyman, *supra* note 5, at 11.

67. Thornton, *Indiana Blackstone*, *supra* note 3, at 324; 1 MONKS, *supra* note 1, at 191.

68. 1 COTTMAN, *supra* note 8, at 11.

69. *Id.*

70. Thornton, *Indiana Blackstone*, *supra* note 3, at 326.

71. *Id.*

72. 1 MONKS, *supra* note 1, at 191.

73. *Id.*

74. One source estimates that Blackford’s average salary of \$1000 a year plus the proceeds from his reports totaled no more than \$50,000 over the course of his career. Honeyman, *supra* note 5, at 11; 1 MONKS, *supra* note 1, at 192.

court reporter.⁷⁵ Individual judges would no longer be able to produce reporters on their own time and for profit.⁷⁶

A second change brought by the 1851 Constitution⁷⁷ had an even greater effect on Blackford. Justices were no longer chosen by gubernatorial appointment but were instead selected by popular vote.⁷⁸ Blackford subsequently lost his seat when Samuel Perkins was slated in the state's Democratic convention.⁷⁹ Ironically, at least some of the sentiment that caused the voters to oust him was likely caused by the very thing which garnered him so much acclaim—the Blackford Reports. It was generally felt that a younger man, one more able to keep up a pace necessary to complete the business of the court, was needed. Certainly, Blackford's own introverted, eccentric personality and his inability to play the game of politics did not help his cause. Blackford would happily have accepted the newly created position of court reporter. He was, however, denied this as well.⁸⁰

Blackford was devastated by his defeat. He told colleagues and friends that he would prefer to stay on and work for free rather than be turned out, but his offer was refused.⁸¹ For a brief time Blackford set up a law office.⁸² Again, his shyness and fear of being incorrect, as well as his long tenure on the bench, left him unfit for the impromptu and public life before the bar. Blackford was totally unfamiliar with the rules of court and of evidence;⁸³ he was timid and embarrassed as a public speaker.⁸⁴ Many sources recount a story of Blackford's first appearance before a jury which so humiliated him that he refused to take further work requiring appearances in court.⁸⁵

Blackford's likely difficult time in limbo ended in 1855 upon the creation of the U.S. Court of Claims. President Franklin K. Pierce appointed Blackford as one of its first judges.⁸⁶ Blackford moved to Washington D.C. and sat as a court of claims judge until his death in the last hour of 1859. After public services in the Statehouse, he was laid to rest at Crown Hill cemetery in Indianapolis. His grave marker reads: "The honors thus conferred were the just rewards of an industry that never wearied, of an integrity that was never questioned."⁸⁷

75. IND. CONST. art. VII, § 6 (as adopted 1851) (amended 1970).

76. *Id.*

77. *Id.* § 3 (as adopted 1851) (amended 1970).

78. Among members of the public, there was a strong opinion that the appointments of at least two justices had been made based solely on political considerations. 1 MONKS, *supra* note 1, at 181.

79. Thornton, *Indiana Blackstone*, *supra* note 3, at 323.

80. 1 COTTMAN, *supra* note 8, at 11.

81. Thornton, *Indiana Blackstone*, *supra* note 3, at 323.

82. *Id.*

83. 1 COTTMAN, *supra* note 8, at 11.

84. Thornton, *Blackford*, *supra* note 5, at 11.

85. Honeyman, *supra* note 5, at 8.

86. 1 MONKS, *supra* note 1, at 110.

87. 1 *id.* at 14.